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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

NO. 812

MILES LABORATORIES, INC.,

Petitioner,

vs.

HENRY J. FROLICH, d b a ENCINO CHEMICALS

Respondent,

RESPONDENT'S OPPOSING BRIEF

HENRY J. FROLICH
17500 Emelita St.
Encino, California
in Propria Persona

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RESPONDENT'S OPPOSING BRIEF

To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Respondent, Henry J. Frolich, respectfully prays that this petition for writ of certiorari be denied.

OPPOSING ARGUMENTS

The Respondent must ask relief for not being more formal in this brief as all of the actions in the very checkered career of the Petitioner are conveniently unrecorded.

This is a very simple and childish case. Unless the Petitioner wishes to admit that he has an agreement with the Warner-Chilcott Co. (Alka-Zane since 1856) and the Warner-Lambert Co. (Bromo Seltzer since 1889) who are both one company, there is no case here at all. both of these products are alkaline effervescent compounds as is Alka Seltzer.

The Petitioner (Alka Seltzer since 1930) has no claim to either of the words in their mark, let alone making a mockery of justice by suing everyone else who uses the word "Seltzer" in their mark.

If the Federal Government should want to bring criminal charges against the Petitioner regarding the Sherman Anti-Trust Laws, they should be held separate from this civil action.

Because of the long previous use of the mark "Bromo Seltzer" plus the fact that there are several other products on the market that use the word "Seltzer" in their marks, the Petitioner can in no way claim a "secondary meaning" under the Latham Act.

The Petitioner even sued the United Drug Co. which is part of the Rexall Drug Co., for their use of the mark "Rex Seltzer." The word "Rex" is short for Rexall and is used on several other products in the Rexall Drug Stores. This only proves that the Petitioner sues on the opponents use of the word "Seltzer."

The Petitioner stated in their application for the registration of the mark, Alka Seltzer (U.S. Pat. Office trade-mark # 283-831) quote:

> " . . . has adopted and used the trade-mark shown in the accompanying drawing, no claim being made to the word Seltzer apart from the mark as shown in the drawing . . . "

Milk O Seltzer is the only completely new approach to grandma's old baking soda and aspirin remedy since the inception of sodium bicarbonate and acetylsalisylic acid.

Since the Petitioner sues everyone who uses the word "Seltzer" in their mark, and this statement needs no proof, it can only mean that the Petitioner feels that the public thinks that all of the products on the market that have the word "Seltzer" in their marks, including "Bromo Seltzer," come from the Miles Laboratories, Inc.

It should not have to be proved in a court of this stature that any child who is three years or older, who is not classified as retarded, can recognize the word "Milk" by sound and associate it properly. No respect to Judge Merrill and his very serious lisp.

The Respondent, even if he would be available, is in no position to assume the role of special deputy prosecutor to air out lower court decisions such as the one handed down that apparently "Alka Seltzer"

did not sound like "Bromo Seltzer" but that "Foam O Seltzer" sounded just like "Alka Seltzer."

The Respondent, in this action, does not feel that he should be held responsible for the stupidity (and that is putting it mildly) of some of the courts and judges in this country.

The Respondent repeats. There are several products on the market that are similar to, or almost exactly like, Alka Seltzer and use the name "Seltzer" in their registered trade-marks.

The Respondent feels that he should not have to press further regarding this action so will only ask that the petition number 812 be unanimously denied.

Respectfully submitted,

HENRY J. FROLICH
17500 Emelita St.
Encino, California
in Propria Persona

April 16, 1962